

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
MARCH 31, 2006 Session

**IN THE MATTER OF H.N.K., d/o/b 7/24/1994,  
A CHILD UNDER EIGHTEEN YEARS OF AGE**

**Direct Appeal from the Juvenile Court for Franklin County  
No. JO2549     Terry Gregory, Judge**

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**No. M2005-02577-COA-R3-PT - Filed on June 13, 2006**

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In this appeal, we are asked to review a juvenile court's termination of a father's parental rights to his minor daughter. The Tennessee Department of Children's Services originally filed a dependency and neglect petition in the Juvenile Court of Lincoln County against the mother and the father of the minor child. That court ultimately dismissed the petition as to the mother, gave the mother custody of the child, and ruled that the child was dependent and neglected due to the father's anger management problem. Accordingly, the juvenile court ordered the father to undergo anger management counseling before he would be permitted to have contact with his daughter. Mother subsequently abandoned the child on the side of a roadway in Franklin County. The department filed a dependency and neglect petition in the Juvenile Court of Franklin County and obtained temporary custody of the child. The department subsequently filed a petition in the Juvenile Court of Franklin County seeking to terminate the parental rights of the mother and the father. As to the father, the petition focused on his failure to complete the anger management counseling ordered by the Juvenile Court of Lincoln County. The Juvenile Court of Franklin County ultimately terminated the parental rights of the father, but the court continued the case against the mother due to insufficient service of process. The father appealed the termination of his parental rights to this Court. We hold that the Juvenile Court of Lincoln County obtained exclusive, continuing jurisdiction over the child as a result of the dependency and neglect proceeding in that court. Accordingly, we vacate the order of the Juvenile Court of Franklin County, as that court did not have subject matter jurisdiction over the petition to terminate the parental rights of the father, and we remand the case to the trial court for further proceedings.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Juvenile Court Vacated and  
Remanded**

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

David L. Stewart, Winchester, TN, for Appellant

Paul G. Summers, Attorney General & Reporter, Kellena Baker, Assistant Attorney General,  
Nashville, TN, for Appellee

## OPINION

### I.

#### FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 20, 1994, Regina N. Pickett (“Mother”) gave birth to a daughter, H.N.K. Wally D. Koonce (“Father”) is H.N.K.’s biological father. On October 27, 1997, the Tennessee Department of Children’s Services (“DCS” or “Appellee”) filed a petition against Mother and Father in the Juvenile Court of Lincoln County, Tennessee alleging H.N.K. to be dependent and neglected and seeking temporary custody of the child. When DCS filed the petition H.N.K. lived with her Mother in Lincoln County,<sup>1</sup> and Father resided in Alabama. As the impetus for filing the petition against Father, DCS alleged that he assaulted Mother and attempted to run a vehicle off of the roadway while H.N.K. was a passenger in the vehicle.

After conducting a hearing on the petition, the Juvenile Court of Lincoln County entered an order on February 18, 1998, wherein the juvenile court dismissed the petition as to Mother and returned custody of H.N.K. to her.<sup>2</sup> As for Father, the juvenile court found that his actions warranted the conclusion that H.N.K. was dependent and neglected. Accordingly, the juvenile court ordered that Father “will not be allowed to visit with his daughter until he demonstrates to the Court that he has successfully participated in a temper management and/or domestic violence rehabilitation program so he can control his temper, and [Father] is specifically ordered to stay away from his daughter and from [Mother].”<sup>3</sup>

At some point, Mother and H.N.K. moved from Lincoln County to Franklin County. In November of 2003, Mother abandoned H.N.K. alongside a roadway in Franklin County with an attached note directing that the child be given to another individual. On November 23, 2003, DCS filed a petition in the Juvenile Court of Franklin County seeking temporary custody of H.N.K. and

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<sup>1</sup> “If dependency or neglect is alleged, the proceeding may be brought in the county in which the child is present when it is commenced.” TENN. CODE ANN. § 37-1-111(c) (2005).

<sup>2</sup> “If the court finds that the child is not a dependent or neglected child . . . it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding.” TENN. CODE ANN. § 37-1-129(a)(1) (2005).

<sup>3</sup> “The court is authorized to require any parent or legal guardian of a child within the jurisdiction of the court to participate in any counseling or treatment program the court may deem appropriate and in the best interest of the child.” TENN. CODE ANN. § 37-1-103(d) (2005). The juvenile court also is empowered to enter a restraining order in appropriate circumstances. *Id.* § 37-1-152.

alleging the child to be dependent and neglected as a result of Mother's actions. On December 15, 2003, DCS drafted a Permanency Plan for H.N.K. Therein, DCS quoted the language from the order issued by the Juvenile Court of Lincoln County ordering Father to undergo anger management counseling. Further, DCS noted that, pursuant to the prior order, Father was to have no contact with H.N.K. until he successfully completed the counseling.

On January 19, 2005, DCS filed a petition in the Juvenile Court of Franklin County seeking to terminate Mother's and Father's parental rights to H.N.K.<sup>4</sup> Therein, DCS stated that the Juvenile Court of Franklin County had jurisdiction over the petition pursuant to the concurrent jurisdiction statutes applicable to parental termination cases.<sup>5</sup> Further, DCS asserted that the Juvenile Court of Franklin County was an appropriate venue for the case, apparently because H.N.K. resided in Franklin County while she was in the temporary custody of DCS.<sup>6</sup> In the petition, DCS alleged the following as grounds for terminating Father's parental rights to H.N.K.: (1) abandonment, (2) failure to substantially comply with the responsibilities in the Permanency Plan, which encompassed his failure to attend anger management counseling, and (3) the persistence of conditions which led to the removal of the child, namely his failure to remedy his anger management problem.

After conducting a hearing on the petition and entertaining evidence, the Juvenile Court of Franklin County entered an order on November 7, 2005 terminating Father's parental rights to H.N.K. Specifically, the juvenile court ruled that DCS failed to carry its burden of proving that Father abandoned H.N.K. or that he failed to substantially comply with the requirements of the Permanency Plan. The court did, however, find clear and convincing evidence that the conditions which led to the child's removal still persisted and that terminating Father's parental rights would be in H.N.K.'s best interest.

Father timely filed his notice of appeal to this Court.<sup>7</sup> On appeal, Father presented numerous issues pertaining to whether the trial court erred when it terminated his parental rights. For the reasons set forth more fully herein, we need not address these issues because we have determined that the Juvenile Court of Franklin County did not have jurisdiction to adjudicate a termination of Father's parental rights.

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<sup>4</sup> Prior to conducting a hearing on the petition, the Juvenile Court of Franklin County continued the case against Mother due to questions arising as to whether DCS appropriately served Mother with notice of the proceeding.

<sup>5</sup> The legislature provides that the juvenile courts of this state shall have concurrent jurisdiction with the chancery and circuit courts of this state to terminate parental rights to a minor child. TENN. CODE ANN. §§ 36-1-113(a), 37-1-104(c) (2005).

<sup>6</sup> A petition to terminate the parental rights of a biological parent may be filed "[i]n the court of the county where the child currently resides in the physical custody of the petitioner or petitioners." TENN. CODE ANN. § 36-1-113(d)(4)(A) (2005).

<sup>7</sup> Father prematurely filed his notice of appeal after the hearing but before the trial court entered the final order in this case. "A prematurely filed notice of appeal shall be treated as filed after the entry of the judgment from which the appeal is taken and on the day thereof." TENN. R. APP. P. 4(d) (2005).

## II. STANDARD OF REVIEW

We ordinarily would employ the well-established standard that governs our appellate review of a parental termination case. *See In re M.J.B.*, 140 S.W.3d 643, 652–54 (Tenn. Ct. App. 2004). The procedural posture of the instant case, however, requires that the Court first ascertain whether the Juvenile Court of Franklin County properly exercised jurisdiction over the petition filed by DCS. Neither party took issue with the subject matter jurisdiction exercised by the Juvenile Court of Franklin County in their initial briefs filed in this Court. It is a well-established rule of appellate jurisprudence in this state that we will not entertain issues presented for the first time on appeal. *In re Adoption of Female Child*, 42 S.W.3d 26, 32–33 (Tenn. 2001); *In re Renee Carmon Valle*, 31 S.W.3d 566, 571 (Tenn. Ct. App. 2000). Further, we ordinarily will review only those issues presented for review by the parties. TENN. R. APP. P. 13(b) (2005).

There is an exception, however, for those instances when the trial court’s subject matter jurisdiction is brought into question. *First Tenn. Bank Nat’l Ass’n v. White*, No. 03A01-9711-CV-00514, 1998 Tenn. App. LEXIS 579, at \*2 (Tenn. Ct. App. Aug. 20, 1998) (no perm. app. filed). “Subject matter jurisdiction is the basis for the court’s authority to act and cannot be waived.” *Id.* (citing *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994)). If not raised by the parties, the Court itself may address the issue of a trial court’s subject matter jurisdiction when reviewing a case on appeal. *See* TENN. R. APP. P. 13(b) (2005) (“The appellate court shall also consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review . . .”); *Scales v. Winston*, 760 S.W.2d 952, 953 (Tenn. Ct. App. 1988) (“It is the duty of any court to determine the question of its jurisdiction on its own motion if the issue is not raised by either of the parties, inasmuch as any judgment rendered without jurisdiction is a nullity.”); *Reynolds v. Hamilton*, 77 S.W.2d 986, 988 (Tenn. Ct. App. 1934) (“Where the court has no jurisdiction of the subject-matter, the question may be raised at any time, by either the parties or the court.”).

At oral argument, this Court questioned the propriety of the exercise of subject matter jurisdiction by the Juvenile Court of Franklin County. The parties were given the opportunity to file supplemental briefs addressing the issue. In his supplemental brief, Father presently takes the position that the Juvenile Court of Franklin County lacked subject matter jurisdiction and requests that we vacate the order on that ground. Conversely, DCS maintains that the Juvenile Court of Franklin County properly exercised jurisdiction over the case. Whether a lower court properly exercised subject matter jurisdiction over a matter is a question of law, which we review de novo on appeal affording no presumption of correctness to the trial court’s findings, if any, in that regard. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000).

### III. ANALYSIS

“The jurisdiction of the juvenile court is derived entirely from the statutes creating it.” *Scales*, 760 S.W.2d at 953 (citing *State ex rel. Hyatt v. Bomar*, 358 S.W.2d 295, 296–97 (Tenn. 1962)); *see also Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977) (noting that “jurisdiction of the subject matter is conferred by the constitution and statutes”). Subject matter jurisdiction cannot be conferred by the parties or be waived. *Gillespie v. State*, 619 S.W.2d 128, 129 (Tenn. 1981); *Baker v. Mitchell*, 59 S.W. 137, 138 (Tenn. 1900); *Travers v. Abbey*, 58 S.W. 247, 248 (Tenn. 1900). We also have noted the following:

We think it is equally clear that a court cannot confer subject matter jurisdiction on another court. Tenn. Const. art. 6, § 1 grants the legislature the power to determine how many and what kinds of courts are required for the administration of justice and the power to fix the limits of each court’s jurisdiction. Courts possess “only such jurisdictional powers as are directly, or indirectly, expressly or by implication, conferred upon [them] by constitution or legislation of the sovereignty on behalf of which [they] function.”

*Simpkins v. Greer*, No. 01-A-01-9202-CH-00060, 1993 Tenn. App. LEXIS 91, at \*7–8 (Jan. 29, 1993) (citations omitted); *see also Hicks v. Hicks*, No. 01A01-9309-CH-00417, 1994 Tenn. App. LEXIS 166, at \*3–5 (Tenn. Ct. App. Mar. 30, 1994).

The events giving rise to the termination of Father’s parental rights began when DCS filed a petition in the Juvenile Court of Lincoln County alleging H.N.K. to be dependent and neglected. The legislature provides that the “[t]he juvenile court has exclusive original jurisdiction of . . . proceedings in which a child is alleged to be . . . dependent and neglected.” TENN. CODE ANN. § 37-1-103(a)(1) (2005). When the juvenile court obtains jurisdiction over a dependency and neglect proceeding,

such jurisdiction shall continue until the case has been dismissed, or until the custody determination is transferred to another juvenile, circuit, chancery or general sessions court exercising domestic relations jurisdiction, or until a petition for adoption is filed regarding the child in question as set out in § 36-1-116(f). . . . In all other cases, jurisdiction shall continue until a person reaches the age of eighteen (18), except that the court may extend jurisdiction for the limited purposes set out in § 37-1-102(b)(4)(B) until the person reaches the age of nineteen (19).

*Id.* § 37-1-103(c). Thus, we previously observed the following:

The jurisdiction of the court entertaining delinquency or dependency proceedings is continuing, to the exclusion of any other court of concurrent jurisdiction, and except as jurisdiction may be relinquished in accordance with statute, once a juvenile court has entertained jurisdiction over a child that court must take affirmative action to dispose of the case in one of the ways provided by statute before jurisdiction can terminate.

*State v. Gouvitsa*, 735 S.W.2d 452, 455–56 (Tenn. Ct. App. 1987) (quoting 43 C.J.S. *Infants* § 53 (1978)).

We begin by noting the obvious. A search of the record does not produce an order entered by the Juvenile Court of Lincoln County transferring the case to the Juvenile Court of Franklin County. Transfers of such cases “shall be at the sole discretion of the juvenile court and in accordance with § 37-1-112.” TENN. CODE ANN. § 37-1-103(c) (2005). Section 37-1-112 of the Tennessee Code provides as follows:

If the child resides in a county of this state and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion after a finding of fact, may transfer the proceeding to the county of the child’s residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding may be transferred if the child has been adjudicated . . . neglected or abandoned and other proceedings involving the child are pending in the juvenile court of the county of the child’s residence.

*Id.* § 37-1-112(a) (2005). There has been no attempt by the Juvenile Court of Lincoln County to transfer its jurisdiction over H.N.K. to another court.

Next, the Juvenile Court of Lincoln County could lose jurisdiction over the child if an adoption petition were filed in another county. The adoption statutes provide that “[u]pon the filing of the [adoption] petition, the court shall have exclusive jurisdiction of all matters pertaining to the child.” *Id.* § 36-1-116(f). When DCS filed its petition to terminate Father’s parental rights in the Juvenile Court of Franklin County, no corresponding petition to adopt H.N.K. was filed. *See id.* § 36-1-113(a) (allowing a petition for adoption to accompany a petition to terminate the parental rights of the biological parents); *In re D.M.D.*, No. W2003-00987-COA-R3-PT, 2004 Tenn. App. LEXIS 381, at \*17–18 (Tenn. Ct. App. June 17, 2004) (“Under section 36-1-113(a), prospective adoptive parents may file a termination of parental rights petition together with an adoption petition.”). Thus, the filing of the petition to terminate Father’s parental rights did not in and of itself operate to divest the Juvenile Court of Lincoln County of jurisdiction over H.N.K.

Finally, we must entertain whether the Juvenile Court of Lincoln County relinquished jurisdiction over H.N.K. by dismissing the dependency and neglect petition in its entirety. In its supplemental brief, DCS argues that the Juvenile Court of Lincoln County disposed of the dependency and neglect petition when it dismissed the petition as to Mother and returned custody of H.N.K. to her, therefore, it contends that the Juvenile Court of Franklin County could exercise jurisdiction over the termination petition pursuant to section 36-1-113(d)(4) of the Tennessee Code. We cannot agree with the position espoused by DCS on appeal.

We previously addressed the competing jurisdiction of two juvenile courts in a case factually similar to the one presently before the Court. In *State v. Ford*, No. 01-A-01-9704-JV-00171, 1997 Tenn. App. LEXIS 795, at \*2 (Tenn. Ct. App. Nov. 14, 1997), the Juvenile Court of Overton County entered an order on February 23, 1995 giving DCS temporary custody of the children following allegations that the father had sexually abused his daughter and physically abused at least three of his sons. The mother was aware of the abuse, but she did nothing to prevent it. *Id.* On February 15, 1996, the Juvenile Court of Overton County entered an order finding the children to be dependent and neglected and ordered that they remain in the temporary custody of DCS. *Id.* at \*2–3. On March 8, 1996, DCS filed a petition to terminate the parental rights of the biological parents in the Juvenile Court of Putnam County. *Id.* at \*3. DCS alleged therein that the Juvenile Court of Putnam County could entertain the petition because the children lived in Putnam County on the date the petition was filed. *Id.* at \*4. The father filed an answer to the petition asserting as an affirmative defense that the Juvenile Court of Putnam County was an improper venue. *Id.* at \*3–4. The Juvenile Court of Putnam County, without ruling on the issue of venue, conducted a hearing and held that the biological parents’ parental rights should be terminated. *Id.* at \*5. On appeal, we concluded that the Juvenile Court of Putnam County did not have jurisdiction to terminate the parental rights of the biological parents. *Id.* at \*10. After quoting the aforementioned statement by this Court in *State v. Gouvitsa*, we held as follows:

From all of this we find and conclude that the proper venue in this case was the Overton County Juvenile Court. The Overton court’s order of temporary custody to the Department is still a valid order pending further proceedings in that court and subject to the Department filing an action there. In addition, the order of the Putnam County Juvenile Court is void for lack of jurisdiction.

*Id.* at \*11.

More recently we determined that the venue provisions found in section 36-1-113(d)(4) were “not intended to allow [DCS] to forum shop or to avoid the clear, precise requirements of Tenn. Code Ann. § 37-1-103(c).” *In re B.N.S.*, No. M2003-02524-COA-R3-PT, 2004 Tenn. App. LEXIS 263, at \*11 (Tenn. Ct. App. Apr. 26, 2004). Thus, “[i]f . . . the termination action is filed in juvenile court, it should be the same juvenile court that originally found the child to be dependent and

neglected unless the case has been dismissed or transferred to another court.” DAWN COPPOCK, COPPOCK ON TENNESSEE ADOPTION LAW 30 (5th ed. 2005).<sup>8</sup>

We are cognizant of the fact that the Juvenile Court of Lincoln County dismissed the petition as to Mother and returned custody of H.N.K. to Mother at the conclusion of the hearing in that court. Had Mother been the only parent involved in the action in the Juvenile Court of Lincoln County, or if the court dismissed the petition as to both parents, then the Juvenile Court of Franklin County would have been allowed to exercise its jurisdiction over the petition to terminate their parental rights. *See, e.g., Farley v. Farley*, No. W2000-01987-COA-R9-CV, 2001 Tenn. App. LEXIS 518, at \*6–8 (Tenn. Ct. App. July 20, 2001). In this case, however, we also are presented with the fact that the Juvenile Court of Lincoln County determined H.N.K. to be dependent and neglected and ordered Father to undergo anger management counseling before he would be allowed to have contact with his daughter. Thus, the Juvenile Court of Lincoln County accepted and retained jurisdiction over the child.<sup>9</sup> This reality is supported by the fact that DCS attempted to rely on Father’s failure to comply with the order of the Juvenile Court of Lincoln County as the basis for seeking to terminate his parental rights in the Juvenile Court of Franklin County.<sup>10</sup> Had Father demonstrated

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<sup>8</sup> The applicable statutes and our case law command a different result in cases where a juvenile court obtains jurisdiction in a dependency and neglect case and a petition to terminate the parental rights of a biological parent is filed in a chancery court or circuit court. As we previously noted in this opinion, the legislature provides that the juvenile courts of this state shall have concurrent jurisdiction with the chancery and circuit courts of this state to terminate parental rights to a minor child. TENN. CODE ANN. §§ 36-1-113(a), 37-1-104(c) (2005). When previously addressing the exclusive jurisdiction of a juvenile court over a dependency and neglect matter, we noted that, when a petition to terminate is filed in a circuit court, the circuit court would have jurisdiction to entertain the termination petition. *State v. Tate*, No. 01-A-01-9409-CV-00444, 1995 Tenn. App. LEXIS 204, at \*9-10 (Tenn. Ct. App. Mar. 31, 1995). We reasoned that to hold otherwise would be to render the concurrent jurisdiction statutes useless by essentially creating a conflict in the statutory scheme, thereby frustrating the legislative intent behind the provisions. *Id.* at \*10; *see also* DAWN COPPOCK, COPPOCK ON TENNESSEE ADOPTION LAW 29–30 (5th ed. 2005) (“If the child has been found to be dependent and neglected in juvenile court and the termination action is filed somewhere other than juvenile court, the juvenile court retains jurisdiction over custody and visitation matters, and the termination court is limited to making a determination regarding termination of parental rights.”).

In *State v. Ford*, the state filed a petition to rehear relying on our reasoning in *Tate*. *State v. Ford*, No. 01-A-01-9704-JV-00171, 1998 Tenn. App. LEXIS 87, at \*1 (Tenn. Ct. App. Feb. 6, 1998). We denied the petition, stating: “Our holding here in no way affects the jurisdiction of either the circuit or chancery courts since the case here involves two juvenile courts, not a juvenile and circuit or chancery court.” *Id.* at \*2. As in *Ford*, the present case requires that we once again limit our analysis to the issue of the jurisdiction of two juvenile courts, which the legislature expressly provides for by statute.

<sup>9</sup> The position espoused by DCS fails to take into account that, when we examine a juvenile court’s jurisdiction in a dependency and neglect proceeding, we are concerned with the court’s jurisdiction over the *child*. *See* TENN. CODE ANN. § 37-1-101 *et seq.* (2005). DCS attempts to argue that if a juvenile court dismisses the dependency and neglect petition as to one parent, then the court’s jurisdiction terminates at that point even though the court has determined the child to be dependent and neglected as a result of the actions of the other parent. This position erroneously places the emphasis on the juvenile court’s actions toward the parents and not the child.

<sup>10</sup> The jurisdictional dilemma presented in this case is further magnified by the grounds chosen by DCS when seeking to terminate Father’s parental rights to H.N.K. It was Mother’s act in abandoning H.N.K. on the side of a  
(continued...)



to the Juvenile Court of Lincoln County that he successfully completed anger management counseling, the court presumably would have reexamined custody and visitation of the child at the appropriate time.

The Juvenile Court of Lincoln County was the first juvenile court to exercise jurisdiction over H.N.K., and the record before this Court on appeal does not indicate that it relinquished its jurisdiction. When a juvenile court exercises jurisdiction over a dependency and neglect proceeding, the statutes governing juvenile courts direct that such jurisdiction shall continue until certain actions are taken. *See* TENN. CODE ANN. § 37-1-103(c) (2005). None of the statutory methods for divesting the Juvenile Court of Lincoln County of its jurisdiction over H.N.K. have been complied with in this case. When a juvenile court renders a decision without subject matter jurisdiction, the legislature instructs that such order “shall be set aside.” *Id.* § 37-1-139(a)(2) (emphasis added). Accordingly, we must remand this case to the Juvenile Court of Franklin County for the entry of an order dismissing DCS’s petition for lack of subject matter jurisdiction. *See Ford*, 1997 Tenn. App. LEXIS 795, at \*12; *see also Sheffy v. Mitchell*, 215 S.W. 403, 404 (Tenn. 1919) (“A court acting without jurisdiction is acting without authority of law, and its decrees are absolutely void.”). “Where there is an unappealed order finding the children dependent and neglected and awarding custody, jurisdiction reverts to the juvenile court that entered that order.” *State v. R.S. & K.S.*, No. M2002-00919-COA-R3-CV, 2003 Tenn. App. LEXIS 657, at \*66 (Tenn. Ct. App. Sept. 11, 2003); *see also State v. Galvin*, No. 03A01-9807-CV-00233, 1999 Tenn. App. LEXIS 257, at \*17 (Tenn. Ct. App. Apr. 16, 1999).

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<sup>10</sup>  
(...continued)

roadway in Franklin County that led to her removal from Mother and sparked the filing of a petition to terminate the parental rights of Mother and Father in Franklin County. In the Permanency Plan drafted by DCS officials in Franklin County, however, DCS quoted the language from the order issued by the Juvenile Court of Lincoln County and subsequently relied on Father’s failure to comply with the order of that court as the basis for terminating his parental rights in Franklin County.

The Juvenile Court of Franklin County determined that, of the grounds for terminating Father’s parental rights alleged by DCS, DCS had only proven the ground of persistent conditions. This ground requires, among other things, that DCS prove that “[t]he conditions that led to the child’s removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect . . . still persist.” TENN. CODE ANN. § 36-1-113(g)(3)(A)(i) (2005). It was the Mother’s actions while living in Franklin County that led to the removal of H.N.K. from Mother’s custody by DCS officials in Franklin County. Whether Father’s anger management problem continued to persist and whether he had participated in counseling to alleviate that problem, however, are the subjects of the order issued by the Juvenile Court of Lincoln County.

**IV.**  
**CONCLUSION**

For the foregoing reasons, we vacate the order terminating the parental rights of Father and we remand this case to the Juvenile Court of Franklin County for the entry of an order dismissing the Appellee's petition to terminate the parental rights of Father for lack of subject matter jurisdiction. Costs of this appeal are to be taxed to the Appellee, the State of Tennessee, Department of Children's Services, for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE